



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

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File: EAC 99 040 52120 Office: Vermont Service Center Date: DEC 8 2000

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Identifying case details is
prohibited clearly unworkable
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a painter. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied

for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, she claims, meets the following criteria.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Counsel asserts that the petitioner fulfills this criterion via articles "in the major newspapers of Latvia." A translated article from Atmoda Atputai features an interview with the petitioner. The petitioner, however, is identified not as an artist or painter, but as an astrologer. This interview, therefore, does not relate to the alien's work in the field for which classification is sought; there is, indeed, no mention at all that the petitioner is a painter. An article in another edition of that newspaper discusses the petitioner's then-upcoming first show at Rigas Vini. Given that the petitioner herself wrote a regular astrology column for that same newspaper, it is not apparent how significant it is that the paper ran stories about one of its own writers.

Articles from Diena, Saturday, and Rigas Balss discuss the petitioner in the context of her work as an artist, more specifically gallery shows of her work. The petitioner has submitted transcripts of television interviews.

The petitioner has not demonstrated that the above publications constitute "major media" as the regulation demands. Local rather than national newspapers cannot confer national recognition because of their limited readership. The burden is on the petitioner to establish coverage in major media, not on the Service to establish that the publications are local or minor national publications.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel states:

[The petitioner] was the arts editor for one of the most popular television show[s] in Latvia. In this position, she was an arbiter of the arts in all of Latvia and had extraordinary influence on the artistic course of the nation.

Documents in the record show that the program Mega aired at 8:00 a.m. on Thursday, May 2, 1996, and at 7:15 a.m. on Thursday, June 6, 1996. A featured segment on these programs was "Gallery," presented by the petitioner.

The record contains absolutely no corroboration for counsel's claim that, as a television host, the petitioner "was an arbiter of the arts in all of [REDACTED]". The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel asserts that the petitioner has submitted "letters of support from literally every major artist in [REDACTED]". Nothing corroborates counsel's characterization of the evidence. Only a minority of the letters are from artists. Among the other witnesses are the owner of a gift shop in a Boston hotel, a practitioner of acupuncture and homeopathy, a poet, and an organizer of rafting competitions. Because of the volume of letters submitted, we discuss selected examples below.

Most of the witnesses who refer to the petitioner as among the best-known artists in Latvia are, themselves, based outside Latvia and it is not clear how they have first-hand knowledge of the petitioner's reputation compared to that of other artists within Latvia. Some witnesses within Latvia, however, do offer similar assessments. [REDACTED] director of Rigas Vini which she deems "the most well known and prestigious gallery," states that the petitioner "was the best selling artist in our country" before departing for the United States. [REDACTED] chief of the Art Department at the [REDACTED] states that the petitioner's "personal exhibitions . . . were accorded . . . a resounding commercial success."

Latvian television producer [REDACTED] states "[t]he administration of our program [REDACTED] was very proud that such a talented and well know[n] person would host a morning show called 'Gallery.'"

Statements by other experts in Latvia, however, while favorable, are far more subdued. [REDACTED], a Riga-based artist, lists her own credentials and states that the petitioner "is a professional artist with an exceptional education," and that the petitioner is a "[t]houghtful, serious and talented" artist. Ms. Palchuk does not state that the petitioner is a particularly well-known artist; praise of the petitioner's technique and training does not imply recognition.

Professor [REDACTED] of the Latvian Art Academy states that the petitioner is "an artistically gifted person" whose student work was "completed responsibly and lyrically touching" and whose later paintings "display . . . professional and deep work." [REDACTED] does not state that the petitioner is well-known for her work.

Professor [REDACTED] head of the Department of History of Culture and Pedagogy at the Latvian Art Academy, states that the petitioner has "achieved recognition [among] spectators, critics, gallery owners and collectors of art." Prof. [REDACTED] does not contend that the petitioner is among the most recognized artists in Latvia; rather, Prof. [REDACTED] states that the petitioner is a "promising painter . . . who is only at the beginning of her professional life" and who "is looking forward to hav[ing] great success."

Clearly, the record does not show anything approaching a consensus among Latvia's art experts to show that the petitioner has already achieved the peak of success in that country. Assertions regarding the promise of future success do not establish that the petitioner has already achieved sustained national acclaim.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel asserts that the petitioner's "work was shown in the major galleries of Latvia." The petitioner has documented that she and another artist had a joint show at the Rigas Vini gallery. The record demonstrates that this was not a museum-style show, in which the principal purpose was to display the petitioner's work; rather, newspaper coverage of the show indicates that several of the petitioner's paintings were sold. The exhibition was, in essence, a sales promotion. The same is true of the "display" of the petitioner's work at the Best of Russia Gallery, an owner of which states that he is "successfully selling [the petitioner's] paintings." The petitioner has not shown that it is a rare privilege or achievement to sell one's work through a gallery. That the paintings are "displayed" prior to sale is not a mark of distinction, but rather a matter of business necessity because few buyers would purchase a painting that they had not seen.

The petitioner asserts "the fact that Rigas Vini can get exhibitions from other countries proves it is a major gallery in Latvia." The petitioner offers no explanation or corroboration for her implied claim that a lesser gallery somehow lacks access to paintings from other countries.

The director denied the petition, stating that the evidence does not consistently place the petitioner among the most accomplished artists in Latvia. The director noted that many expert witnesses within the Latvian art community attest to the petitioner's talent, but do not indicate that she is particularly well-known among artists in that country.

On appeal, counsel argues "[a]ny intimation that the person must be only of the highest international stature is clearly not supported by the statu[t]e and cannot be imposed as a lawful requirement." The director, however, did not demand that the petitioner show such stature. Rather, the director found that the petitioner "does not

appear to have achieved her acclaim as the most prominent artist in Latvia." The director's observation that the petitioner is not among "the most noted Latvian artists in the world" is confusingly worded, but it is not an unequivocal demand for evidence of world fame. The final phrase "in the world" can be omitted and the sentence more clearly retains its meaning.

Counsel maintains on appeal that the petitioner has satisfied the four criteria pertaining to published material; acting as a judge of the work of others; major contributions; and display at artistic exhibitions. Counsel repeats previous arguments but offers no new clarification or supporting evidence. We have already addressed the petitioner's claims to have satisfied the above criteria.

The petitioner's claim of a national reputation relies largely on assumptions and questionable inferences drawn from incomplete or ambiguous evidence. The statute demands "extensive documentation" to support a claim of extraordinary ability. The petitioner has not submitted extensive documentation of such acclaim; rather, the petitioner has established that she is a successful artist. Opinions about the extent of that success appear, from the evidence, to be divided. The petitioner has submitted a comparatively small volume of evidence, although the same evidence has been re-submitted in some cases four or more times, with the result that the bulk of the record consists of redundant copies of documents.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished herself as a painter to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a painter, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field, at either a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.